



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6513-99
27 January 2000

[REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 14 October 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 22 November 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness reports should stand. Since the Board found no material defect in your performance record, they had no basis to strike your failures by the Fiscal Year 2000 and 2001 Major Selection Boards, or set aside action to effect your involuntary discharge from the Regular Marine Corps. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

0513-99

IN REPLY REFER TO:
1610
MMER/PERB

OCT 14 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED], [REDACTED] USMC

Ref: (a) Captain [REDACTED] DD Form 149 of 13 Jul 99
(b) MCO P1610.7C w/Ch 1-5
(c) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 October 1999 to consider Captain [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 920101 to 920406 (TR) -- Reference (b) applies
- b. Report B - 940901 to 941031 (TR) -- Reference (c) applies

2. The petitioner contends the Reporting Senior failed to fulfill his responsibilities in that he did not convey an accurate portrayal of his (the petitioner's) performance, characteristics, and professional qualities. He specifically challenges the mark of "outstanding" in Item 13g (Tactical Handling of Troops) and indicates that his billet as the Assistant Public Affairs Officer did not afford him the opportunity to serve in a tactical situation; nor was he in a designated flight billet as delineated in subparagraph 4005.7b of reference (b). It is his belief that the Reporting Senior's inattention in assigning this mark severely discredits the report. Concerning Report B, the petitioner argues that the provisions of subparagraph 2007.4a preclude officers of the same grade as functioning as Reporting Seniors unless specifically authorized by the Reviewing Officer in the "Remarks" section of the "Reviewing Officer's Certification."

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

- a. At the outset, the Board points out that the petitioner is basing his arguments on the provisions of MCO P1610.7D. That Order was not the governing directive for either of the challenged fitness reports.

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b. Succinctly stated, the petitioner offers absolutely no documentation or corroboration as to how or why Report A is anything less than accurate. It would appear that prior to the beginning date of Report A, the petitioner's 21 months of flight training was terminated. Why the Reporting Senior chose to assign an observed mark in Item 13g (which would have properly assessed aeronautical abilities) is not clear. However, the Board observes that a grade of "outstanding" is hardly an injustice. At worst, it is an inadvertent mark that does not invalidate the report.

c. The petitioner is in error when he argues that the Reviewing Officer was required to authorize Captain [REDACTED] to be the Reporting Senior for Report B. Per subparagraph 2006.4a(1) of reference (c), the Reporting Senior can be the same grade as the Marine Reported On when the Reporting Senior is either the Commanding Officer or the Officer-in-Charge. In both cases, no Reviewing Officer authorization/confirmation is required.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Captain [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED] JR.
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

651399

IN REPLY REFER TO:

1600
MMOA-4
22 Nov 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Captain [REDACTED] USMC
of 18 Nov 99

1. Recommend disapproval of Captain [REDACTED]'s implied request for removal of his failure of selection.

2. Per the reference, we reviewed Captain [REDACTED]'s record and petition. He failed selection on the FY00 USMC Major Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Transfer fitness reports of 920101 to 920406 and 940901 to 941031. Captain [REDACTED] implies a request for removal of his failure of selection

3. In our opinion, the petitioned reports do ^Bsome present competitive concern to the record. The unfavorable PERB action does nothing to change the competitiveness of the record. Therefore, we recommend disapproval of Captain [REDACTED]'s implied request for removal of his failure of selection.

4. Point of contact is [REDACTED], (703) [REDACTED]

[REDACTED]
Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division